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principal case had in mind a submission to a show of force appears from its consideration of the evidence. To call a submission to a show of force consent is a misuse of terms, and the further statement that consent is no defense to an action of false imprisonment was unnecessary to the decision of the case and is not sustained by the authorities.

INJUNCTION—RIGHT OF ATTORNEY TO CONSULT WITH CLIENT CONFINED IN JAIL.—A client of P, an attorney, was confined in a county jail. Notwithstanding P's repeated efforts to see her, D, the sheriff in charge of the jail, arbitrarily refused to permit P to see or consult with her client. On a petition for an injunction against D, the court *held* that an attorney has the right to be allowed, without undue or arbitrary restraint, to consult with clients confined in a jail, and that an injunction may be granted to enforce the right. *Wilmans* v. *Harston* (Tex., 1921), 234 S. W. 233.

A person confined in jail clearly has the right to consult with his attorney at reasonable times. *State* v. *Davis,* 9 Okla. Cr. Rep. 94; *People* v. *Risely,* 1 N. Y. Cr. Rep. 492; *Hamilton* v. *State,* 68 Tex. Cr. Rep. 419 (involving a statute). But see *Kinloch* v. *Harvey,* 11 S. C. 326. It would seem that an attorney had a reciprocal right to see his client, and it has been so held. *In the Matter of the Sheriff, etc.,* 1 Wheeler Cr. Cas. (N. Y.) 303. The principal case clearly states this right, but the report does not show on what basis the court took jurisdiction to enforce the right by injunction. Assuming the general rule to be that injunctions are only granted when a right of property is involved (but see 29 HARV. L. REV. 640), it would seem, nevertheless, that such a right was clearly present here. "The right of a citizen to pursue any calling, business, or profession he may choose is a property right to be guarded by equity as zealously as any other form of property." *New Method Laundry Co.* v. *MacCann,* 174 Cal. 26. An attorney's right to his clientele and to carry on his profession is one of substance, and a direct violation of that right, like that in the principal case, would obviously result in a certain pecuniary loss to him. Equity may refuse to enjoin an injury to reputation only. *Mead* v. *Stirling,* 62 Conn. 586; *Judson* v. *Zurhorst,* 30 Ohio C. C. 9. But courts of equity have often gone much farther than the principal case in finding a property right on which to base their jurisdiction, as when the publication of private letters is restrained, *Gee* v. *Pritchard,* 2 Swanston's Rep. 402; *Woolsey* v. *Judd,* 4 Duer (N. Y.) 379; or a birth certificate cancelled. *Vanderbilt* v. *Mitchell,* 72 N. J. Eq. 910. See also cases collected in note to *Ex parte Badger,* 14 A. L. R. 286. While the principal case seems to be without direct precedent, it is submitted that the holding is a correct one and is no departure from the established fields of equity jurisdiction.

INJUNCTION—WASTE—BALANCE OF INJURY.—There was a devise of a portion of an estate to the defendant for life, with remainder to the heirs of his body, and if there should be no heirs of his body, remainder to the plaintiff. The defendant joined with his nine children in mortgaging the

premises to secure a loan, and proposed with them to dispose of a portion of their property to a subdividing company in order to raise sufficient money to discharge the mortgage and prevent the sale of the land on foreclosure. The plaintiff, who was a contingent remainderman, sought to enjoin the sale and subdivision of the property into building lots on the ground that it was waste, but it was *held* that equity would not enjoin. *Brown* v. *Brown* (W. Va., 1921), 109 S. E. 815.

It would seem that the court would have been justified in holding that the acts sought to be enjoined were of such an ameliorating nature as not to amount to waste. It was held not waste to raze a dwelling house when changes in the surroundings had made the premises more valuable as business property. *Melms* v. *Pabst Brewing Co.*, 104 Wis. 7; see 19 MICH. L. REV. 105. The court, however, assumed that these acts would be waste, and placed its decision upon two grounds: first, that the complainant's interest was not likely to vest, since it depended upon the double contingency of his surviving the defendant and the defendant surviving all of his nine children and their issue; secondly, that the hardship upon the defendant by granting the injunction would greatly exceed the hardship upon the complainant if it was refused, which, partly because of the remoteness of his property right, the court regarded as inconsequential. It appears settled that a contingent remainderman cannot maintain an action at law for waste. *Hunt* v. *Hall*, 37 Me. 363; *Taylor* v. *Adams*, 93 Mo. App. 277; *Latham* v. *Lumber Co.*, 139 N. C. 9. In equity it is held that one having a possibility of reverter, as upon the owners of the fee ceasing to use the land for church purposes, cannot obtain an injunction against waste. *Dees* v. *Cheuvronts*, 240 Ill. 486. See also *Curles et al.* v. *Wade*, 151 Ga. 142; *Mathews* v. *Hudson*, 81 Ga. 120. But although a contingent remainderman cannot succeed at law, he may obtain an injunction against waste. Where the life tenant committed waste by drilling for oil, it was said that while the contingent remainderman could not sue for damages nor bring a bill for accounting for past waste, he could enjoin future waste "for the protection of the inheritance which is certain, though the person on whom it may fall is uncertain." *Ohio Oil Co.* v. *Daughetee*, 240 Ill. 361; see also *Watson* v. *Wolff-Goldman Realty Co.*, 95 Ark. 18. It would seem, therefore, that the fact that the complainant is a contingent remainderman should have no bearing on the decision in the principal case, except as it leads the court to refuse to enjoin waste of a negligible nature in favor of one whose property interest is uncertain, and thereby impose a serious present loss on the defendants. The equities favor the defendant from the standpoint of hardship. But the doctrine of balance of injury has been generally confined to those cases where the injury to the defendant from an injunction would be very great, as where it involved the closing down of a large manufacturing plant, or where, under similar circumstances, the suppressing of an important commodity vitally affected the interests of the public. And on principle the weight of authority is against the doctrine, because, justifying under the discretion of equity to grant or refuse an injunction, it determines the legality of claimed rights

in accordance with their value. See POMEROY, EQUITY JURISPRUDENCE (Ed. 2), §§ 1943-1945; *Hansen* v. *Crouch*, 98 Ore, 141. In *Continental Fuel Co.* v. *Haden*, 182 Ky. 8, the court was asked to cancel a mining lease upon the ground that the lessees had committed waste by failing to operate the mines in a workmanlike manner. This was refused because the injury to complainants was inconsequential as compared to the loss of $100,000 in mining machinery and equipment installed in the mine by the defendant. It is seen that this decision is in harmony with the distinction which has been drawn between the case where the complainant's injury is actually small and the case where his injury is clearly substantial but proportionately less than the injury to the defendant. The courts will more readily refuse an injunction upon balancing injuries in the former case than in the latter. *Campbell* v. *Seaman*, 63 N. Y. 568. The technical or imponderable nature of the plaintiff's injury seems also to have been considered in *Bliss* v. *Washoe Copper Co.*, 109 C. C. A 133. This factor was present in the principal case, since the beneficial character of the changed use of the property made the plaintiff's injury, if any, purely technical, and, together with the uncertainty of his ultimate property right, causes the result reached to appear preëminently just. It should be noted, however, that in the cases above referred to, and in those cited in POMEROY, *supra*, the plaintiff would have alternative recourse to a suit for damages at law, while in the principal case, as pointed out above, refusing an injunction leaves the plaintiff without a remedy. It is well, however, to confine the relief which equity grants to a contingent remainderman to those cases in which equitable considerations are more clearly in his favor.

NEGLIGENCE—PARTY GUILTY OF CONTRIBUTORY NEGLIGENCE AS MATTER OF LAW BECAUSE STRUCK BY AUTOMOBILE HAVING RIGHT OF WAY.—While crossing a street at a speed of 15 miles an hour the plaintiff was struck by the defendant, who was coming along a cross street at 35 miles an hour and had the right of way by statute. *Held*, the plaintiff was guilty of contributory negligence as a matter of law. *Anderson* v. *Jenny Motor Co.* (Minn., 1921), 185 N. W. 378.

The rule laid down in the principal case is taken from the Minnesota decision of *Lendahl* v. *Morse*, 181 N. W. 323, in which negligence in law is confused with negligence in fact. It is submitted that in the principal case Holt, J., takes the sounder view in his dissenting opinion when he says: "There are so many varied circumstances in every accident at a street crossing that the question of whose fault it was should be determined by the triers of fact." He further points out that "under the rule of the *Lindahl* case an ox team could never cross a downtown street of Minneapolis, except possibly between 2 a. m. and 6 a. m., for some reckless speeders to the right of the team would surely be in time to hit the rear of the wagon, even if two blocks away when the team first entered the intersection." Obviously, the whole matter of who was to blame for the accident should be left to the jury with proper instructions as to the law applicable to the circumstances.